



POLICE DEPARTMENT

In the Matter of the Disciplinary Proceedings

- against - : FINAL
Sergeant Henry Conde : ORDER
Tax Registry No. 905990 : OF
Military & Extended Leave Desk : DISMISSAL

Sergeant Henry Conde, Tax Registry No. 905990, Shield No. 1062, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 83194/07, as set forth on form P.D. 468-121, dated July 30, 2007, and after a review of the entire record, has been found Not Guilty of Specification Nos. 1, 2, 3, and 4, and found Guilty of Specification Nos. 5, 6 and 7.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Sergeant Henry Conde, from the Police Service of the City of New York.

A handwritten signature in black ink that reads "Raymond W. Kelly".

RAYMOND W. KELLY
POLICE COMMISSIONER

EFFECTIVE: AT 0001HRS on 03/05/2012.



POLICE DEPARTMENT

June 1, 2011

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In the Matter of the Charges and Specifications : Case No. 83194/07

- against - :

Sergeant Henry Conde :
Tax Registry No. 905990 :
Military & Extended Leave Desk :

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At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable John Grappone
Assistant Deputy Commissioner - Trials

A P P E A R A N C E:

For the Department: Beth Douglas, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent: Andrew Quinn, Esq.
The Quinn Law Firm
399 Knollwood Road Suite 220
White Plains, New York 10603

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

COURTESY • PROFESSIONALISM • RESPECT

The above-named member of the Department appeared before me on November 16, 2010, January 19, 2011 and February 16, 2011, charged with the following:

1. Said Sergeant Henry Conde, while assigned to the Internal Affairs Bureau, on or about and between November 2005 and March 2007, in New York County, did knowingly, intentionally and corruptly conspire to obstruct, influence and impede an official proceedings, to wit: a Federal Grand Jury investigation in the Eastern District of New York.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONTACT
Title 18, USC, Sections 1512 (k) and 3551 et seq. – CONSPIRACY TO
OBSTRUCT JUSTICE

2. Said Sergeant Henry Conde, while assigned to the Internal Affairs Bureau, on or about and between November 2005 and March 2007, in New York County, did knowingly, intentionally and corruptly obstruct, influence and attempt to obstruct, influence and impede an official proceedings, to wit: a Federal Grand Jury investigation in the Eastern District of New York.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
Title 18, USC, Section 1512 (C) (2), 2 and 3551 et seq. OBSTRUCTION OF
JUSTICE

3. Said Sergeant Henry Conde, while assigned to the Internal Affairs Bureau, on or about February 24, 2007, in New York County did knowingly and willfully make a materially false, fictitious and fraudulent statement and representation in a matter within the jurisdiction of the Executive Branch of the Government of the United States.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
Title 18, USC, Sections 1001 (a) (2) and 3551 – FALSE STATEMENT

4. Said Sergeant Henry Conde, while assigned to the Internal Affairs Bureau, on or about March 14, 2007, in New York County, did knowingly and willfully make a materially false, fictitious and fraudulent statement and representation in a matter within the jurisdiction of the Executive Branch of the Government of the United States.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
Title 18, USC, Sections 1001 (a) (2) and 3551 FALSE STATEMENT

5. Said Sergeant Henry Conde, while assigned to the Internal Affairs Bureau, on or about November 6, 2006, did wrongfully access and subsequently obtain confidential information from the Internal Affairs Professional Computer System, which was not related to the official business of the Department.

P.G. 219-14, Page 1, Paragraph 2 – DEPARTMENT COMPUTER SYSTEMS

6. Said Sergeant Henry Conde, while assigned to the Internal Affairs Bureau, on or about November 6, 2006, did wrongfully divulge or discuss official Department business without permission or authority to do so. (*As amended*)

P.G. 203-10, Page 1, Paragraph 3 PROHIBITED CONDUCT

7. Said Sergeant Henry Conde, while assigned to the Internal Affairs Bureau, on or about October 16, 2006, at a location known to this Department, with intent to obtain a benefit or deprive another of a benefit, said Sergeant committed an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized, to wit: said Sergeant obtained confidential information from the Internal Affairs Professional Computer System, which was not related to the official business of the Department and divulged said information to another Member of Service. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT
NYS Penal Law Section 195.00(1) OFFICIAL MISCONDUCT

The Department was represented by Beth T. Douglas, Esq., Department Advocate's Office, and the Respondent was represented by Andrew Quinn, Esq. The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty of Specification Nos. 1, 2, 3 and 4; and Guilty of Specification Nos. 5, 6 and 7.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Christopher Kelly and Police Officer Jose Anaya as witnesses.

Christopher Kelly

Kelly is a Special Agent with the Federal Bureau of Investigation (FBI) currently assigned to the Public Corruption Squad at the New York Office. He stated that his duties and responsibilities is to investigate corruption against anyone who is "receiving tax payers dollars" that being any public official, including police officers. He testified that at one point he became involved in an investigation involving a Department's Detective [REDACTED]. That investigation began in late November or early December 2006.

Kelly's partner at the time was Special Agent Person A. On February 24, 2007, he made a phone call to the Respondent and identified himself as an agent with the FBI. He told the Respondent that the Internal Affairs Bureau (IAB) was aware of this phone call and that he wanted to meet to have a discussion with him. On February 24, 2007, he met with the Respondent at a Wendy's Restaurant parking lot on Hempstead Turnpike. The Respondent had agreed to meet Kelly and Person A in their vehicle located in the parking lot. At one point, the Respondent approached and got into their vehicle and they began asking him questions.

Kelly stated that the first thing they did was to play a compact disc (CD) that they had in their laptop which consisted of a discussion between [REDACTED] and [REDACTED]'s wife. During their conversation, there was a discussion that included the name "Henry." According to Kelly, [REDACTED] told his wife that he spoke with Henry and that Henry was going to find out who made a complaint against him. Kelly then asked the Respondent if he "ran the log for" or found out information on [REDACTED] and the Respondent admitted that he did so at [REDACTED] a's request. The Respondent also admitted during the interview to

sharing the contents of that log with [REDACTED]. Kelly explained that the log that he was referring to was the “the Internal Affairs IA[]Pro[fessional] system.”

Kelly had also asked the Respondent if anyone else had ever asked him to run a log like he did for [REDACTED] and the Respondent replied, “yes”. Kelly stated that the other members who asked the Respondent to run their logs were Jerry Amato and Jose Anaya; they had asked him to search their names on the IA Pro system. Kelly further stated that “after he stated to us that those people had requested him to run those logs, I said: So what did you do? Did you run it? Something to those words, and he said he did not run those logs.” Kelly talked with the Respondent a bit further about his knowledge of [REDACTED] and also his relationship with [REDACTED]. Kelly recalled the Respondent stated that he had no knowledge of any criminal activity [REDACTED] may have been involved in. Kelly then asked the Respondent to wear a recording device and to contact [REDACTED] to see if [REDACTED] would be willing to meet with him.

Prior to arranging any meetings with [REDACTED], Kelly conducted an investigation as to what logs the Respondent may have opened up and to whom. He stated that sometime after the February 24 meeting with the Respondent and before their next meeting on March 14, Kelly “did review that [u]sage [r]eport [Usage Log, Department Exhibit (DX) 1] and [he] did in fact see that [the Respondent] had in fact searched the name Jose Anaya and some others in the IA[]Pro system.” Kelly stated that on March 14, 2007, he again met with the Respondent to accomplish two things: “One, we knew we had met with [the Respondent] the first time. We believed he had made a false statement with us. By that time, we had already realized also that we had an omission in our report, our Police report, which we call it an FD[-]302 -- so the fact that [the Respondent] made a

false statement to us was not captured in that first 302 [Respondent Exhibit (RX) A, FD-302 dated 02/26/2007]

Kelly stated that his partner, Person A, had prepared the report and he had reviewed it prior to their March 14, 2007, meeting with the Respondent. Kelly explained that the omission he was referring to was:

the fact that [the Respondent] stated he did not run the logs of Jose Anaya and Jerry Amato when we asked him that, so the question -- the answer that was requested of him was included in the 302, but the other statement, which we believe was false as far as not running the logs, was not included, so that was a mistake on our part. The purpose, going to your question, was what was the purpose of going to the next interview was twofold: One, to see if we can meet with Mr. [REDACTED] again, and also to give [the Respondent] another opportunity to respond to our questions about the logs.

Kelly further explained that the omission was that the Respondent did not run the logs of Jerry Amato or Jose Anaya and that omission was not documented in the FD-302 that was prepared by his partner and initialed by Kelly. The omission had not been made part of the recording of the conversation -- the recording in this case was not an audio recording, it was the written recording or summary of their conversation.

Kelly stated that they met a second time with the Respondent, for a brief period on March 14, 2007, at the same Wendy's restaurant parking lot. Once they met, they moved to different location closer to the Respondent's residence and "talked about numerous things, but the conversation regarding the logs was a brief discussion." Kelly asked the Respondent if he had ever run a log for anyone else, other than [REDACTED] without a law enforcement or work-related reason for doing do so and the Respondent's answer was no: "No, and that everyone else he can explain."

Once they were closer to the Respondent's residence, Kelly had the Respondent make a phone call to [REDACTED]. The phone call was not recorded because he and his partner had anticipated that [REDACTED] would agree to meet with the Respondent at another location. He did say, however, that he and his partner did listen to the conversation while the Respondent spoke to [REDACTED].

Kelly testified that the FD-302 that was generated following the March 14 meeting with the Respondent "was pretty brief. It essentially said that Mr. [REDACTED] was the only person he [the Respondent] had ever run without a work-related reason, a law enforcement reason and that anyone else he could explain." (RX B)¹

On March 22, 2007, they met with the Respondent for a third time at 26 Federal Plaza in New York City. The reason they met at Federal Plaza was because he and his partner did not believe that the Respondent was completely honest with them and they wanted to bring him into a more formal environment at their offices. This was done in the hope that they could finally be able to get to the "truth." During that meeting, he and his partner were present and were the only people in the room with the Respondent. Kelly stated that he had the usage report in front of him from IAB, and that usage report covered a specific period of time which he did not recall, but he knew that usage report included some of the names they had spoken about, including Anaya [REDACTED] and others.

Kelly reviewed DX 1, and stated that it appeared to be a portion of the usage report that he reviewed with the Respondent on March 22, 2007, specifically for the date

¹ The document actually states "Conde ran Luis Batista's name in the NYPD's Internal Affairs Bureau (IAB) computer system IAPro at the request of [REDACTED] [REDACTED] is the only person Conde ever searched in the IAB system that cannot be explained as a legitimate work related search if questioned by IAB or any other investigating agency."

of October 16, 2006. The usage report shows logs accessed by the Respondent from October 4, 2006, through November 9, 2006.

Kelly testified that the usage report indicated that the Respondent accessed the log for Anaya and ran a comprehensive report regarding Anaya on October 16, 2006. He stated that during his interview with the Respondent, he sat across from him and assumed that he saw the usage report which Kelly had in front of him. He then asked the Respondent if he did in fact run Anaya's name in IA Pro and the Respondent said that he did. When Kelly was asked if the Respondent's answer was different from any answer he gave on a prior date he responded, "yes. This was the first time he admitted to us that he had run Mr. Anaya's name in IA[]Pro."

After the Respondent had admitted to him that he ran Anaya's name in the IA Pro system, Kelly then asked him if he shared the contents of the information with Anaya and the Respondent told him that he did not. Kelly added that "[h]e told us, as I recall, that he gave overall guidance to Mr. Anaya on how to handle the investigation. I recall him saying to us that he told Mr. Anaya to tell the truth to IAB Investigators who might question him. I believe he told us that he told Mr. Anaya that he was not going to lose his job over whatever was in the log."

On cross-examination, Kelly stated that when he and Person A were assigned to the investigation, it was to investigate [REDACTED]. He stated that the purpose of meeting with the Respondent was to see if he would admit to them that he ran a log on [REDACTED] and if he could share information about what he knew about [REDACTED]. They also hoped that they could put a wire on him so that he could meet with [REDACTED] and record their conversations.

Their ultimate goal of meeting with him was for him to assist them in their investigation with [REDACTED].

Kelly testified that at the time that he met with the Respondent on February 24, 2007, he had no indication that the Respondent had knowledge of their Federal investigation of [REDACTED]. He stated that, at some point before meeting with the Respondent, he had conversations with IAB that revealed that the Respondent had, in fact, run a log for [REDACTED]. Kelly did not recall at what point in his investigation that he learned that.

Kelly acknowledged that prior to interviewing the Respondent on February 24, he allowed him to hear the CD which contained a phone conversation between [REDACTED] and his wife where a reference was made to the name Henry. Kelly further acknowledged that he was told by the Respondent that he (the Respondent) was asked by [REDACTED] to run his name through the IA Pro system to see whether or not there were any reports against him. Kelly stated that the Respondent "told me he accessed the log, running the log and shared the contents with Mr. [REDACTED]." Kelly interpreted the contact that the Respondent had with Mr. [REDACTED] was that "[the Respondent] was doing his job. It was a regular day, and at some point in his life an old friend of his contacted him to ask him to see if there were any logs for him and he admitted to us doing that and then told us that he contacted Mr. [REDACTED] and told him about [the log]."

Kelly further stated that he was not the one who took notes of his conversation with the Respondent on February 24, 2007; his partner did that day. He added that there were no audio devices used that day. Kelly then reviewed RX A, (FD-302 dated February 26, 2007) and stated that this document pertained to the interview of the

Respondent on February 24, 2007. He added that "Person A would be the writer of this document and myself as co-case, initialing the document."

When Kelly was directed to paragraph four of RX A where it states that 90 Precinct members had called the Respondent asking if IAB was looking into anyone from the 90 Precinct and that Amato and Anaya had also requested information from the Respondent, Kelly could not recall what question was asked to ascertain what appears on that document to be the Respondent's answer. He stated that it was possible that the question was asked if anyone else from the 90 Precinct had requested information from him but he could not recall if that was so. He acknowledged that he did not have any contemporaneous notes or recordings or anything else that would indicate to him what specific question was asked to get an answer indicated in paragraph four of RX A.

When Kelly was asked about the question he asked the Respondent regarding the information requested by Amato and Anaya, he stated, "I recall asking has anyone else ever asked you to run an IA Pro search for them, and [the Respondent's] statement back was both Jerry Amato and Jose Anaya had previously requested him to do a search." Kelly stated that the Respondent volunteered that information to him without being shown any documents or tape recordings to indicate that he did so. Kelly went on to state that he did not remember the exact wording of the question that he asked him regarding Anaya and Amato and he also did not remember the exact wording of any of the other questions during that interview. All that he could provide would be the "gist of the question." He stated that the gist of the follow-up questions that he asked the Respondent regarding Anaya and Amato was: "What did you do? Did you run it?" Kelly stated that his answer was no.

Kelly testified that it was subsequent to this meeting that he felt that the Respondent was not being truthful. He stated that “at some point following this interview, I don’t know what triggered my belief that [the Respondent] was not truthful, but probably conversations with Internal Affairs, partners of mine, discussing the interview with [the Respondent], something triggered me to believe that [the Respondent] was not truthful, which is why I needed to get my hands on that usage report and that’s what I did.” When asked what he meant by not being truthful he replied “about running logs or not running logs for Mr. Anaya and Mr. Amato.” When Kelly was confronted with the fact that, after the Respondent admitted that those officers asked him to run logs, Kelly did not specifically recall what he asked next, he replied, “No, I don’t know word for word.” He further explained, “It was a little bit clear for me, sir. I know that when he told me that those two individuals asked him to run their logs that my follow-up question was: What did you do? Did you run them? And his answer to me was no.” Kelly further explained that when he asked the Respondent about Amato and Anaya, he was asking if he ran the log. Kelly then repeated what he, in fact, remembered asking the Respondent and that was: “What did you do? Did you run it? And he said no.” Kelly added that he did not “know what [the Respondent] understood” by his questions -- whether he was asking if he ran the logs or disclosed the logs to the officers.

Kelly further stated that during his discussion of [REDACTED] with the Respondent, he was not sure whether he used the words “Federal investigation” when referring to Batista. He added that he “assumed that [the Respondent] understood that the FBI was a Federal Investigation.” Kelly acknowledged that he never suggested to the Respondent that Anaya and Amato was subjects or targets of any investigation. He further acknowledged

that the Respondent told him that he was not aware of any criminal activity regarding Batista.

Kelly further testified that the Respondent assisted him in an investigation regarding [REDACTED]. He acknowledged that the Respondent actually wore a body wire and met with [REDACTED] to get him to talk about his association with drug dealers.

Kelly stated that after the first meeting with the Respondent, he did not know if he made a false statement to him. He acknowledged, however, that it is his position that the Respondent did make a single false statement to him -- whether or not he ran Anaya's through the IA Pro system. Kelly acknowledged that there was nothing in the report from the February 24, 2007, interview (RX A) that states that the Respondent told him he never ran the log for Amato or Anaya or anyone else. And, there is no notation in his partner's contemporaneous handwritten notes that the Respondent told Kelly or Person A that he never ran Amato or Anaya or anyone else through the IA Pro system.

Kelly stated that he scheduled the March 14, 2007, meeting with the Respondent in the hopes that the Respondent would give him a true statement and that he would help in their investigation of [REDACTED]. Kelly noted that the Respondent was helpful before the first meeting and he was also helpful after the meeting.

Kelly inspected another FD-302 which is dated March 14, 2007 (RX B). RX B states "Conde ran [REDACTED]'s name in the NYPD's Internal Affairs Bureau (IAB) computer system IA Pro at the request of B[REDACTED]. [REDACTED] is the only person Conde ever search in the IAB system that cannot be explained as legitimate work related search if questioned by IAB or any other investigating agency."

Kelly admitted that prior to the March 14, 2007, meeting he understood the distinction between “running a log” and “disclosing a log”. He denied discussing those distinctions with the Respondent because he believed that since the Respondent worked for IAB, Kelly assumed that he knew what those terms meant.

Kelly stated that the second meeting on March 14, 2007, was also not audio or video recorded. He explained that “at the time...I had a notepad with me. I probably scribbled some notes down as I was talking to [the Respondent].” Kelly stated that the only handwritten notes that he took of the March 14, 2007, interview with the Respondent are the two sentences contained in RX D which reads: “1st Time he has ever run someone, everyone else he can explain. He has been approached by others to run logs, but never did it for them.”

Kelly testified that the Respondent, by running a log without having a work-related reason, “He’s admitting there was no work-related reason to be searching Luis Batista’s name. He’s saying that’s the only person he searched without a good reason.” Kelly admitted that he is not familiar with the Department’s Patrol Guide or that members of IAB are allowed to run names through the system for non-work-related reasons. He added, however, that on March 14, 2007, he did understand the difference between running a name and disclosing the information to another individual.

Kelly stated that he did not ask the Respondent on March 14, 2007, if he disclosed any information to Anaya because he stated that the Respondent told him that he did not run the log and so “if you don’t run a log, you can’t disclose information.”

Kelly stated that during the March 22, 2007, interview, he communicated to the Respondent that he believed that the Respondent was untruthful to him and his investigators.

Kelly, after being shown an FD-302 dated March 22, 2007, (RX C), concerning the interview conducted that day of the Respondent, stated that that document, and other similar documents, are meant to be statements of witnesses and are not for the opinions of the investigators where they would express their feelings that a person has lied to them. Kelly acknowledged that RX C states that the Respondent look at Anaya's log, but did not tell Anaya the content or details of that log.

Kelly acknowledged that his claim is that the Respondent made false statements in that he denied running Anaya's name on both February 24, 2007, and March 14, 2007. When asked if the alleged false statements that the Respondent made to him had impaired his investigation, Kelly replied, "I'll never know how it impaired my investigation. I know that I was unable to continue working with [the Respondent] as he was not a credible witness any longer. We can't work with people who don't tell us the truth, so because of that I don't know where the investigation could go. I don't know how much more we would have learned about Mr. [REDACTED] without [the Respondent's] continued assistance." Kelly acknowledged that [REDACTED] was subsequently tried and convicted and is presently in a Federal prison.

Kelly was then asked by the Court if his investigation was within the scope or pursuant to a Federal grand jury investigation or a FBI investigation when he was questioning the Respondent and he replied, "Sir, I don't recall, honestly, if we had already been involved with the Federal grand jury, but I believe it would have been a

Federal grand jury investigation." When asked if the grand jury had been impaneled, he said, "I honestly would not want to say 'yes' or 'no', sir. I can answer likely yes, but I don't recall."

Kelly stated that he had "no indication -- until he read that log, I had no indication that he knew about an investigation into Mr. [REDACTED]."

Police Officer Jose Anaya

Anaya is a 16-year member of the Department currently assigned to the 76 Precinct. At one point, he was assigned to the 90 Precinct where he was enrolled in an 18-month program that placed him on track to becoming a detective. Anaya stated that he and the Respondent graduated the Police Academy together in 1994, but he actually knew him from when they worked at the 90 Precinct, from 1994 until the Respondent's promotion in 2005.

Anaya testified that on October 14, 2006, he became involved in a domestic dispute with his then-[REDACTED] Person B where she alleged that he tried to throw her out of a car by her hair. As a result of that incident, Anaya was placed on modified assignment. He stated that he called the Respondent several days after the incident and explained that he was on "the detective track" and that his [REDACTED] had made allegations against him. Anaya told the Respondent that:

she alleged that I pulled her out of the car. I initially told him that I saw her at the diner with a male companion and we got into a verbal altercation. We walked to her car. She got in her car. We still continued to talk. At that time she left, and then I told him that her allegations were that I pulled her out of the car by her hair.

He stated that the Respondent told him to give him a couple of days and that he would look into it.

Regarding their second phone conversation, Anaya was not sure whether he called the Respondent or the Respondent telephoned him. Anaya stated that the Respondent "briefly told me that what I told him is what she said." Anaya added that the Respondent did not go into any more detail other than that statement. When Anaya was asked what he understood the Respondent to mean by his statement to him, Anaya replied, "that I explained – I told him the allegations and that's exactly what she told Internal Affairs."

Anaya then called the Respondent several months later and had a third conversation where he explained to the Respondent that Person B and he were back together again and that IAB was still trying to contact her and she was not returning their phone calls. Anaya stated that the Respondent told him that his [REDACTED] should pick up the phone if she feels she needs to. According to Anaya, the Respondent also explained that she could withdraw her complaint if she wanted to and that there is a form that she could fill out. Anaya further stated that he was not sure whether he had another conversation with the Respondent after that third phone conversation. He added that the purpose of his phone call to the Respondent was because he was on the detective track and wanted to know how long this investigation would take.

On cross-examination, Anaya stated that when the Respondent was transferred to IAB, he lost contact with him. At the time that he had the domestic incident, he did not have any daily contact with the Respondent, nor did he see him off the job or anything of that nature.

Anaya stated that he did not call the Respondent because he thought that the Respondent was investigating his case; he called him because of his concern about the domestic incident and how that would impact his opportunity to become a detective. He wanted to determine whether he would be able to continue in the detective track and he specifically wanted to find out how long the investigation was going to take.

Anaya stated that when he called the Respondent the first time he did not know that the Respondent knew any of the details of his case. He acknowledged that during the phone call he was advising the Respondent of the facts of his domestic incident case and further acknowledged that he essentially was asking the Respondent for advice. The advice he was seeking was how long it took IAB to investigate these kinds of cases.

Anaya pointed out that he did not ask the Respondent to interfere in the investigation or to speak for him or to get involved in any way.

Anaya also made it clear that he did not ask the Respondent to read his investigative log to him or to tell him what was in the log. He stated that he only knew the allegations against him “partly from what Person B told me she told them, and then while we were at the 115 [Precinct], my delegate spoke to the Duty Captain and they informed – my delegates in turn told me.” He also acknowledged that the Respondent, during the second phone conversation, never disclosed to him the contents of the log. He reiterated that during that second phone conversation, the Respondent said, “[W]hat I [Anaya] told him [the Respondent] is what she said.” According to Anaya, the Respondent did not give him any further details about his case and pointed out that the Respondent did not tell him to do anything other than that his [REDACTED] “should answer

the phone if they call her". The Respondent also told Anaya that his case could go on for several months.

The Respondent's Case

The Respondent testified in his own behalf.

The Respondent

The Respondent is a 17-year member of the Department currently assigned to the Military and Extended Leave Desk. He stated that he began working for the IAB in December 2005. He knew [REDACTED] from his childhood, growing up in his neighborhood. They actually lived on the same block but did not hang out together because his parents were strict and they did not let him hang out as much. At one point in 1997, they were both assigned to the 90 Precinct but were in separate squads. They did, however, play softball together for the Department and that was the primary source of their contact with each other.

The Respondent testified that there came a time when [REDACTED] called him and, as they were talking about softball, [REDACTED] asked him if the Respondent could do him a favor. [REDACTED] told the Respondent that "he's on track to get grade -- from Third Grader to become Second Grader, if there was anything in his file that would hold him up from getting that promotion." Respondent stated that he knew [REDACTED] to be a "very active" Police Officer and Detective, so he could see him getting the promotion to the next grade. At the time of the phone call, the Respondent had been with IAB for about a year to a year-and-a-half.

Several days after this conversation with [REDACTED], the Respondent looked into [REDACTED]'s log by accessing the IA Pro system. The Respondent explained that “[y]ou can access the IA Pro system, which is an Internal Affairs[] computer system, and you can pull up people's past history or any current -- current allegation made against the Officer. It doesn't give you the details of the investigation but just the -- kind of the summary of an allegation.” According to the Respondent, the IA Pro system is not accessible to anyone outside of IAB. In order to access that system, one needed to enter a specific ID that belonged an investigator in order to access the system. When he accessed [REDACTED]'s log, he put in his personal code. When the Respondent was asked what was his understanding as to whether he was allowed to look at logs on cases that he was either involved or not involved in and what was the IAB protocol, he replied, “Guys do it, you know, as far as to just see what case is going on, how to get guidance regarding other cases. It's done in the Internal Affairs.” He acknowledged that once he accesses the system, he has access to any logs being investigated by Internal Affairs.

When he accessed [REDACTED]'s log, he saw that it was “a criminal association log.” He explained that, in his experience in IAB, “it's a very common allegation, usually against active Police Officers, which Detective [REDACTED] was. I briefly glanced over the log...This log is an active case against Detective [REDACTED]. It's a Criminal Association case.”

The Respondent then reviewed a printout of [REDACTED]'s log (DX 2), which he would have viewed on his computer screen when he accessed it. He stated that when he viewed the log, it said that [REDACTED] was associating with a drug dealer named Person C and that Person C, a CI (confidential informant) and [REDACTED] were having sex with “some girl” in a

hotel. According to the log, the CI and Person C were giving drugs to the "girl." He stated that his impression and response to the log was that "it rung untrue and was it farfetched." He came to this conclusion because his personal knowledge of [REDACTED] made it seem to him that it was "almost impossible that he would do something like that" and that in his experience in IAB "as far as criminal association cases, where most of these criminal associations cases are brought against an active Officer, kind of slowing them up in their process as far as any ongoing investigation, so those two things coupled together, I said this can't be true."

The Respondent stated that subsequent to looking at [REDACTED]'s log, he again spoke to him by phone, but could not remember who made the call. He stated that he told [REDACTED] the contexts of the log. He "told him, you know, there's an allegation against you saying that you're hanging out with some drug dealer, and there is a CI involved and you guys are having sex with a girl. He says: Oh, I'm not worried about that." The Respondent said that was the end of the conversation. Upon further questioning, however, the Respondent stated that he mentioned to [REDACTED] that there was a Person C in the log. The Respondent had no idea who Person C is.

[The relevant portion of the log (DX 2) states: "ASSOCIATION NARCOTICS DEALER...Narc Boro BN MajorCase called the c/C to report that during the interview with the DA office registered CI..., stated S/O DT3 [REDACTED]...is a friend to a drug dealer with street name Person C. CI stated during 2003, between June to August, on five (5) different occasions, in an unknown Hotel in the confines of 83Pct on Decatur St, CI

himself and Person C gave ‘cocaine’ to some girl and then CI, Person C and S/O a had sex with the girl.”]

The Respondent stated that he did not provide any other information regarding the log to [REDACTED]. He added that, at the time of the disclosing of the log, [REDACTED]’s reputation in the Department was that he was a very well-known Detective, both active and proactive, and made a lot of arrests and was on track for a promotion. He acknowledged that he had no reason to suspect that [REDACTED] was involved in any type of criminal activity.

The Respondent stated that he did not have any further conversation with him regarding the investigation of the log, that [REDACTED] never asked him to intercede or interfere with the investigation, and he did not provide any guidance or suggestion as to what [REDACTED] should do with regard to the log.

After receiving a phone call from Kelly, he met with him and Person A in their vehicle. After preliminary introductions, the FBI agents played a tape for him of [REDACTED] talking to his wife Person D and the Respondent heard [REDACTED] telling Person D, “Henry is going to give me the heads up.” After he listened to the tape, the Respondent stated that Kelly asked him “if I had disclosed a log to Detective [REDACTED] and I stated: Yes, I have.” According to the Respondent, at one point in their meeting, Kelly told him that he was going to be brought up on criminal charges for obstruction and the Respondent’s response was that he had no idea what was going on so how could he obstruct anything. Kelly then asked him if he was willing to cooperate in helping them build a case against [REDACTED] and the Respondent replied: “Absolutely.” Kelly then informed the Respondent that [REDACTED] was involved in a narcotics ring much bigger than the Respondent had any

idea of and that it would be in the Respondent's best interest if he helped out in the investigation. The Respondent stated that prior to this conversation with Kelly he had no knowledge of [REDACTED]'s criminal activity.

The Respondent further stated that during that first meeting, on February 24, Kelly, at no point, asked him whether he had disclosed logs to any other members of the Department. The Respondent then agreed to make a controlled phone call to [REDACTED] and arranged for a meeting where he would wear a body wire. The Respondent subsequently made a controlled phone call to [REDACTED] and [REDACTED] invited him to his home. This all took place on February 24, 2007.

Before agreeing to wear a body wire, the Respondent stated that Kelly asked him if anybody else had asked for IAB information. The Respondent answered yes and said that Amato and Anaya had asked him about IAB investigations.

The Respondent stated that, when he went to [REDACTED]'s home, he wore a recording device that was in his pocket. Once there, he was prepared with:

a fictitious story that the FBI had asked me to tell [REDACTED] that I was stopped by FBI agents on my home from the dentist and that they were asking me questions regarding Detective [REDACTED]

Detective [REDACTED] apologized, saying: 'I'm sorry. I should have told you. This was going on, and he went on a long story. I just let him speak about--there were numerous characters in the story. There was Person C, [REDACTED] and --you know a big elaborate story.'

The Respondent acknowledged that that conversation was ultimately used against [REDACTED] during his criminal trial. The Respondent added that during that conversation, [REDACTED] was not admitting to any criminal activity. The Respondent acknowledged that [REDACTED] was admitting to his knowledge of a number of certain players involved in

criminal activity. The Respondent later learned, during his criminal trial, that the players in this case were known drug dealers working their enterprise in the confines of the 83 Precinct. At the end of the day, on February 24, 2007, IAB went to the Respondent's home and removed his firearms.

On March 14, 2007, the Respondent met with Kelly for a second time. The meeting was set up by Kelly. The Respondent testified that his understanding of the meeting was that Kelly wanted him to make another attempt to be wired and meet with [REDACTED]. He made another phone call to [REDACTED], but this time it was not recorded. When he got [REDACTED] on the phone he began speaking and the Respondent just removed the phone from his ear and let the agents listen to the conversation.

At the end of the telephone conversation, Kelly had asked the Respondent if he had disclosed any of the logs to anyone else, to which he answered, "No. That Detective [REDACTED] was the only one." He further stated, "Agent Kelly had asked that if on March 14th if I had run anybody, which is different. If I had ran anybody. I said: Yes, I can explain those...Run[ning] is viewing logs, and disclosing is actually giving the context of the information."

The Court inquired as to when he had the conversation with Anaya and the Respondent stated it was before he had his conservation with [REDACTED]. But he claimed that he did not disclose any information contained in the log to Anaya. When he ran [REDACTED]'s log he told [REDACTED] what was in the log and he acknowledged that that was the only time that he ever disclosed to an officer the content of a log.

The Respondent stated that what he meant when he told Kelly that he can "explain" was "[a]s IAB investigators, we run logs all the time, and I'm fully aware that

you can just pull up all my runs and they're very easily explainable." When questioned by the Court about what he said to Anaya, the Respondent explained, "Actually I was giving what we refer to as lip service. What I mean by lip service is, when you are in Internal Affairs, you have numerous members of the service who want to get information, find out -- you know, just find out information and any active case, and we're almost taught to give lip service. Yeah, I'll check it out. Kind of just like brush them off...Then later on in the conversation is when I would say what you said is what's in the log." The Respondent added that while he had looked in the log but that Anaya did not know that. The Respondent stated that the reason he viewed Anaya's log was, "to be very honest with you, I was just being nosey." The Respondent acknowledged that he never lied to Kelly or knowingly provided false statements or, in any way attempt to obstruct Kelly's investigation.

On March 22, 2007, the Respondent met with Kelly and Person A for a third time, at 26 Federal Plaza in New York City. During this meeting, Kelly was more aggressive, including slamming his hand on the desk and accusing the Respondent of lying to him. During that meeting, Kelly reviewed the Respondent's Usage Log (DX 1). The Respondent noted that the majority of names they were asking him about in the log were names he used when he first began working in IAB to learn about how to operate the system. He stated, "You punch names and you learn how to work the system." It was during this meeting that he first became aware that Kelly was alleging that the Respondent lied and provided false statements to Kelly. The Respondent, at that point, immediately denied those allegations to Kelly.

The Respondent testified that Anaya was a friend of his and that Anaya called him sometime in October 2006. Anaya called and “informed me that he was being placed on modified, that he got into a domestic incident with his current [REDACTED] ...He got into an argument. As best as I can remember, he had caught his [REDACTED] hanging out with some other guy and they got into a verbal dispute.” He stated that Anaya never asked him to run a log for him or look up information and tell him what the file contained. The Respondent did run his file because he was being “a little nosey” and, after viewing the file, he never told Anaya its contents.

He stated that Anaya’s main concern was that his promotion was going to be held up and he wanted to know how long this disciplinary process was going to take. The Respondent told him that it would usually take a couple of months. He further told him, “Tell your [REDACTED] to be honest. You be honest. Have your [REDACTED] speak with the IAB investigators. The whole thing is going to blow over.” He reiterated that he never discussed with him what was in Anaya’s log. The Respondent stated that, to the best of his recollection, what he told Anaya was, ‘it is what you said it is.’ He explained that Anaya “knew everything so there was nothing new that I could give him even if I wanted to. The Respondent never attempted to intercede on behalf of Anaya.

The Respondent stated that he went on Federal trial for obstruction and false statements and was acquitted of all charges.

On cross-examination, the Respondent reiterated that he knew [REDACTED] growing up and he met Anaya while he assigned to the 90 Precinct. He did not socialize with [REDACTED] other than at the Department social parties, Christmas parties where they would all meet together.

The Respondent was shown a confidentiality agreement with IAB dated December 26, 2005, which contained the Respondent's handwriting and his signatures (DX 4). The Respondent acknowledged that the document contained an agreement between him and IAB that wrongful disclosure of information will not be tolerated. Discussing official Department business, except as authorized, was prohibited, and the wrongful disclosing of confidential information maybe a crime under the Penal Law. The Respondent also acknowledged that paragraph one of the document stated that unofficial inquiries into IA Pro, if it is not related to official business is unauthorized.

The Respondent acknowledged that his Usage Log (DX 1) showed that on October 16, 2006, he accessed the file of Anaya. The Respondent acknowledged that prior to October 16, 2006, he received a call from Anaya and that Anaya informed him that he was placed on modified assignment following a domestic dispute with his [REDACTED] Anaya had also informed him that this dispute happened in a parking lot of a diner and that his [REDACTED] claimed that Anaya pulled her out of the car by her hair. He further acknowledged that he told Anaya to give him a few days and that he would look into it and explained that "the reason I said that is we are kind of taught to give lip service, which I explained." He further acknowledged that he did not just give lip service to Anaya, he actually accessed his log because he was nosey. He then had a subsequent phone conversation with Anaya and stated to him that what he (Anaya) told him (the Respondent) is basically what his (Anaya's) [REDACTED] said to him (Anaya). The Respondent clarified his statement to Anaya by saying, "My remark to Police Officer Anaya was what you said is what -- what happened." What he was saying to Anaya was "basically confirming whatever he told me was it...I think I might have used the word

confirming. He already knew what was going on. Maybe confirm is not the correct word, but I -- yeah, yes."

The Respondent acknowledged that on November 6, 2006, he received a call from Batista, who also asked him questions regarding a hold up in his promotion. When asked what lip service he gave [REDACTED] the Respondent stated, "I didn't tell him anything. I didn't tell him anything. I don't remember when I accessed the log...Is that the day he called or is that the day when I accessed the log?" The Respondent then stated that he did not recall when [REDACTED] called. He explained that when [REDACTED] called, "he asked me if I could do him a favor. That he was up for grade and if there's anything that could hold up his case or hold up his promotion." The Respondent stated that he did not recall if he gave [REDACTED] any lip service during his conversation with him. He also did not recall telling [REDACTED] that he was not authorized to look into anything regarding his request.

The Respondent acknowledged that on November 6, 2006, he actually did access [REDACTED]'s log (DX2). He acknowledged that [REDACTED]'s log mentioned a CI and it was the CI who was providing the Department with information that [REDACTED] and drug dealer Person C had sex with a female and that the CI and Person C ingested or gave cocaine to the girl as well. The Respondent further acknowledged that when he was talking to [REDACTED] he actually divulged the contents of this log and told him that a CI was involved in the investigation. When the Respondent was asked if it ever occurred to him that he was potentially putting a CI in harm's way he stated, "I would never think that Detective [REDACTED] would hurt a Confidential Informant, which again, for the whole thing ringing untrue to me." The Respondent stated that by believing that the log was untrue, he did not feel that he was jeopardizing the CI in any fashion by giving the information to

[REDACTED] . When asked by the Court if he had any evidence to support his beliefs that the log was untrue, the Respondent replied, "Well, it's my year[-]and[-]a[-]half in Internal Affairs, based on my experience." He added that the actual contents of the log never took place.

[This Court was subsequently informed by defense counsel that the contents of the log may have been unsubstantiated. This Court was also informed by defense that Person C was a drug lord in the 83 Precinct. The Department Advocate, however, said that the log was not unsubstantiated by IAB. Rather, the allegations were never pursued because they had a larger case to deal with and they never moved on those particular allegations.

There was no clear information presented to this Court as to why there was no follow-up with those allegations in the log.]

The Respondent denied that he told Kelly that Anaya had asked him to run a log and that he refused to do so and he further denied that he divulged confidential information to Anaya prior to the times he met with Kelly. When Anaya contacted the Respondent in October 2006, he (the Respondent) did not refer him (Anaya) back to his union or union delegate to answer his inquiry about how long his promotion would be held up, nor did he tell him to contact his commanding officer to find out that information.

The Respondent then reviewed Kelly and Person A's reports of their meeting with him on February 24, 2007 and March 14, 2007 (RX A and RX B). When the Respondent was asked if there were anything false in RX A, he stated, "This is an incomplete report

because there was an omission left out by Agent Kelly...The information contained on the February 26th, the information here is incorrect...As far as the information that has been put into this transcript, all the information appears to be correct."

When referring to RX B, the Respondent stated "there are two things that are incorrect about this report...one thing that was left out was the controlled phone call that was made to [REDACTED] The remark where it says: [REDACTED] is the only person Conde ever searched in the IAB system that can not be explained as legitimate work-related search was questioned by IAB or other investigative agents...That is incorrect."

On redirect examination, the Respondent clarified what he stated with regards to RX B, stating, "What I told the Agent that day was that [REDACTED] was the only one I had disclosed the contents of the information to. There was a follow-up question to that which was: Have you ran anybody else, and I said: Yes, I have. I can explain those." What the Respondent further acknowledged was that he never told Kelly that he can explain them as legitimate work-related searches if questioned by IAB or anyone else -- "Those were not my words." The Respondent also noted that it was also not included in the report that he was asked if he disclosed to those other individuals the contents of those logs and that he told the agents no. That was not included in this report. The Respondent acknowledged that that was the part that Kelly had omitted or forgot to put in the report and that was what the Respondent was alluding to in his testimony.

FINDINGS AND ANALYSISSpecification Nos. 5, 6 and 7

The Respondent is charged that on November 6, 2006, he wrongfully accessed and obtained confidential information pertaining to [REDACTED]'s investigative log contained in the Internal Affairs Bureau Professional computer system, which was not related to the official Department business. He is also charged with divulging or discussing confidential information about [REDACTED] with him without permission or authority to do so.

The Respondent is further charged that on October 16, 2006, with intent to obtain a benefit or deprive another person of a benefit, he obtained confidential information pertaining to Anaya from the Internal Affairs Professional computer system and divulged that information to Anaya while knowing that he was unauthorized to do so.

At the outset, the Respondent was well aware that divulging confidential information was prohibited by the Department. He signed a notification letter (DX 4), dated December 26, 2005, where it clearly points out that

members assigned to the Internal Affairs Bureau have access to information and data of a confidential and sensitive nature. This information ranges from entries on the Central Personnel Index (CPI) to data in the IA PROFESSIONAL Computer System. In addition, certain members have access to information pertaining to the day-to-day operations of this Bureau as well as to the details of on-going investigations.

The notification letter emphatically informs IAB members that they "will be held strictly accountable for maintaining the confidentiality of information pertaining to this Bureau. The wrongful disclosure (leaking) of information will not be tolerated." The notification further states that wrongfully divulging or discussing confidential information is prohibited under the Department's Patrol Guide Procedure 203-10, and

"may be a crime under both the New York City Charter (Section 2604[4]) and the New York State Penal Law (Official Misconduct-Article 195.00 [1])." The Respondent acknowledged reading the notification by signing it on December 26, 2005.

The Respondent admitted that he received a phone call from his friend, Anaya, in October 2006 asking him to check on his domestic incident case involving his [REDACTED]. Anaya told him that he was placed on modified duty because his [REDACTED] reported that, during a verbal argument, he pulled her out of a car by her hair. After the Respondent told him he would get back to him in a couple of days, he accessed Anaya's IA Pro file containing his confidential information. During their next phone conversation, the Respondent claimed that he did not read the file to Anaya, but nonetheless confirmed to Anaya the information in the file by telling him that what Anaya told him is what his [REDACTED] alleged happened.

The Respondent stated that he only looked in Anaya's file because he was "nosey" and that, by saying what he did to him, he was only giving Anaya "lip service." By giving him this not-so-cryptic message, however, the Respondent undoubtedly told Anaya what the file contained even though he did not actually read the contents word for word.

An even more serious violation of divulging confidential information was his accessing and divulging the contents of [REDACTED]'s file to [REDACTED]. This came about when he was talking to [REDACTED] on the telephone and [REDACTED] asked him if he could do him a favor. [REDACTED] was on track for a promotion and wanted the Respondent to find out if there was anything in his file that would hold up his advancement. The Respondent knew

[REDACTED] very well, not only from childhood but also from playing softball together for the Department.

The Respondent reviewed [REDACTED]'s file, where the relevant portion of the log informed the reader that a call was made to IAB by the Department's Narcotics investigators "to report that during the interview with the DA office registered CI..., stated S/O DT3 [REDACTED]...is a friend to a drug dealer with street name Person C. CI stated during 2003, between June to August, on 5 different occasions, in the confines of 83Pct on Decatur St, CI himself and Person C gave 'cocaine' to some girl and then CI, Person C and S/O had sex with the girl." (DX 2)

[REDACTED]'s file was clearly informing the Department that the District Attorney's office interviewed a confidential informant and learned, at the very least, that [REDACTED] was alleged to be friends with a drug dealer and that they were together on several occasions where drugs were being given to a girl who in turn had sex with them.

The Respondent attempted to convince this Court that the information in the file was somewhat common for an active officer, which he claimed [REDACTED] to be, and therefore was essentially unimportant. In justifying his divulging the entire log to [REDACTED], including the fact that a CI was involved, the Respondent stated that he did not believe the log to be true and could not believe that [REDACTED] would do anything to harm a CI. As it turned out, the CI was giving information regarding a high-level drug dealer, Person C, and [REDACTED] was ultimately sentenced to 15 years in Federal prison for his active drug-dealing with that drug dealer.

This Court finds that no amount of excuses on the part of the Respondent can condone his divulging the aforementioned confidential information.

Based on the foregoing, the Respondent is found Guilty of Specification Nos. 5, 6 and 7.

Specification Nos. 1 and 2

The Respondent is charged in these two specifications with what is essentially an obstruction of justice in that he "did knowingly, intentionally and corruptly conspire to obstruct, influence and impede" an official proceeding, that being a Federal grand jury investigation. This charge refers to the Respondent revealing confidential information from [REDACTED]'s IA Pro file to [REDACTED] and, in doing so, he revealed the name of a drug dealer, Person C, and exposed the fact that a CI was involved in [REDACTED]'s case.

The Department adopted the Federal court judge's instructions to the jury in the Respondent's Federal trial by informing this Court that the Department did not have to prove that an official proceeding had to actually have been pending or that the Respondent was aware of such proceeding. This Court would only have to find that an official proceeding was reasonably foreseeable. In addition, for the Respondent to act "corruptly" is for him to act with an improper or wrongful purpose, that is, with a conscious purpose of wrongdoing, and his actions had the natural and probable consequence of interfering with a grand jury investigation and trial, and did so interfere. The Department's position (like the Federal judge's) is that it is sufficient that the Respondent had the intent to obstruct a proceeding, including a local or state proceeding, and that the proceeding happened to be Federal. With regard to conspiracy to obstruct justice, the Respondent would have had to enter into an agreement with [REDACTED] to do so and the Respondent knowingly and intentionally became a member of the conspiracy.

This Court found the Respondent Guilty of serious charges of wrongfully accessing and divulging confidential information to [REDACTED] (Specification Nos. 5 and 6). From the evidence presented, this Court found that [REDACTED] was a friend of the Respondent -- he knew [REDACTED] from the neighbor where he grew up and the Department's softball team. [REDACTED] contacted the Respondent as a friend seeking a favor. The favor, the Court was told, was to give him ([REDACTED]) an insight into his records to see if there was anything that would hold up his promotion. The information that the Respondent provided were allegations that [REDACTED] was associating a drug dealer. The information turned out to be true and Batista is now in jail.

After learning about his log, [REDACTED] apparently ceased his blatant criminal association, making it more difficult for investigators to gather evidence. The Respondent is, therefore, accused of corruption, with intent to obstruct a proceeding and knowingly and intentionally entering into an agreement and becoming a member of a conspiracy to obstruct an official proceeding.

This Court does not find that the Respondent, by divulging confidential information to [REDACTED] had any intentions of obstructing any official proceeding. What he did was undoubtedly a very serious act, but there was no evidence that it was done with a criminal intent. It must be kept in mind that he did the same favor for his friend Anaya (see Specification No. 7) and, from the evidence in this case, it should only be concluded that his primary intent, however misguided, was to "be one of the boys" to two of his friends. Unfortunately, his divulging of the information to [REDACTED] did affect an investigation, but that consequence is exactly why, or significant reason behind, the Department strictly prohibits the giving out of confidential information. What the

Respondent did was a serious violation of the Department's guidelines, but not, under these circumstances, a violation of Federal law.

Accordingly, the Respondent is found Not Guilty of Specification Nos. 1 and 2.

Specification Nos. 3 and 4

The Respondent is charged in these specifications that on February 24, 2007, and March 14, 2007, he made materially false, fictitious and fraudulent statements and representation in a matter within the jurisdiction of the Executive Branch of the Government of the United States. Essentially, the Respondent is charged with lying to Special Agent Kelly by telling him that while he ran and divulged information from [REDACTED]'s file, he did not do so for anyone else, including Anaya. The alleged false statement arises from the fact that he had, in fact, ran Anaya's file and confirmed the contents to him.

The Respondent's meetings with Kelly and his partner Person A were not recorded either on audio tape or by means of a stenographer. They first met on February 24, 2007, and, according to Kelly, he gave candid answers regarding his disclosing confidential information to [REDACTED]. The Respondent also told Kelly by answering, "yes" that other members, including Anaya, had asked him for information. When Kelly was given that answer, he said that he then asked the Respondent, "So what did you do? Did you run it? Something to those words, and he said he did not run those logs." According to Kelly, he could only remember the "gist of the question" and did not question the Respondent further regarding Anaya. Kelly admitted that did not know what the Respondent understood his questions to mean -- whether he was asking if he ran the logs or disclosed

the logs to the officers. Kelly also did not record his question and the Respondent's answers in his typed summary of that interview (RX A).

Prior to his next meeting with the Respondent, on March 14, 2007, he reviewed the Respondent's Usage Log (DX 1) and saw that the Respondent did access Anaya's log. During the March 14 meeting, Kelly asked the Respondent, "other than Mr. [REDACTED] did you ever run a log for anyone else without a law enforcement or work-related reason for doing so and his answer to me was no. No, and that everyone else he can explain." Again, Kelly did not ask any follow-up questions to clarify the Respondent's answers. He or his partner then recorded in their typed report dated March 14, 2007 (RX B), "[REDACTED] is the only person [the Respondent] ever searched in the IAB system that cannot be explained as a legitimate work[-]related search if questioned by IAB or any other investigating agency." In Kelly's handwritten note jotted down at the time of the meeting (RX D), he merely wrote, "1st Time he has ever run someone, everyone else he can explain. He has been approached by others to run logs, but never did them for them."

During their March 22, 2007, meeting, the Respondent did admit that he ran Anaya's log.

The Respondent told this Court that during the February 24 interview, Kelly had asked him if he had disclosed the logs to anyone besides Batista and he told him no, that Batista was the only one. During the March 14 interview, he said that he was asked if he had ran anybody's log and he told him that he did and could explain those. His thinking was that he runs logs all the time which are explainable and also that he never read the log to Anaya. He just confirmed what was in the log.

This Court finds that, while Kelly was performing his duties in a professional manner, he did not sufficiently record the Respondent's statements in a fashion that

would clearly and unequivocally point to a false statement made during their meetings. With regard to Anaya, the Respondent should have been asked, at the very least, what file he accessed, its contents and what he divulged to Anaya from that file. Once those questions were asked, then, and based on the Respondent's answers, a decision could be made regarding the truthfulness of his answers.

Based on the foregoing, the Respondent is found Not Guilty of Specification Nos. 3 and 4.

PENALTY

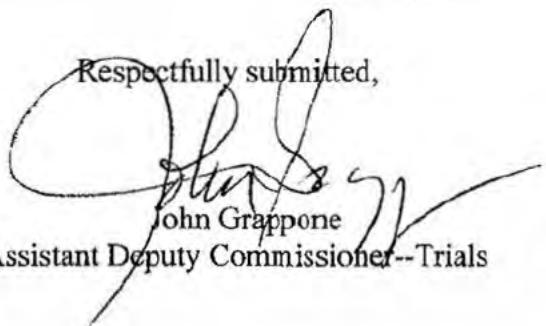
In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on February 28, 1994. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty of wrongfully accessing the confidential logs of [REDACTED] and Anaya and divulging the contents of those logs to the officers. He read Batista's log to him, giving out very sensitive information regarding a drug dealer and a CI, with the possibility of placing the informant's life in danger. He also divulged the contents of Anaya's file to him. It matters not that he thought what he did was harmless because he knew [REDACTED] to be a good officer. That "good officer" is now serving 15 years in a Federal prison for drug dealing. It is also an unacceptable explanation that he did not read the file to the Anaya. Confirming information to an

officer that he might have already known or summarizing information without reading word for word to an officer, is in fact telling them exactly what was in the file.

It should be noted that these allegations are not about one police officer discussing a situation with a fellow police officer about a situation that one of the officers may have gotten into or perhaps both were involved in. This is a case where the Respondent, in a position of trust as a member of IAB and privy to very sensitive information concerning members' files, divulged information from those files. In doing so he breached his confidentiality agreement with the Department and, in the process, demonstrated to the Department that he cannot be trusted in the future.

Based on the foregoing, it is recommended that the Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,

John Grappone
Assistant Deputy Commissioner--Trials

APPROVED

MAR 05 2012

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

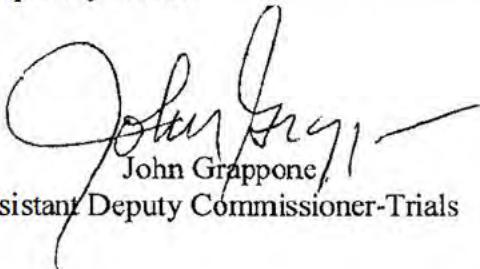
From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
SERGEANT HENRY CONDE
TAX REGISTRY NO. 905990
DISCIPLINARY CASE NO. 83194/07

The Respondent received ratings of 4.5 “Highly Competent,” 4.5 “Highly Competent” and 3.5 “Above Competent” on his last three performance evaluations contained in his personnel file for 2005, 2006 and 2007, respectively. The Respondent was awarded 16 Excellent Police Duty medals and three Meritorious Police Duty Medals. The Respondent has no prior formal disciplinary record.

For your consideration.


John Grappone
Assistant Deputy Commissioner-Trials